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INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE

Dated as of September 1, 1974

Between

BORG-WARNER EQUITIES CORPORATION

as Lessor

and

**CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY**

as Lessee

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Attachments to Lease

Schedule A—Description of Equipment

Schedule B—Certificate of Acceptance under Equipment Lease

Schedule C—Schedule of Casualty Value

THIS EQUIPMENT LEASE dated as of September 1, 1974 between BORG-WARNER EQUITIES CORPORATION, a Delaware corporation ("Lessor") and CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation ("Lessee");

WITNESSETH:

WHEREAS, the Lessor and the Lessee have entered into an Acquisition Agreement dated the date hereof (the "Acquisition Agreement") with PROFESSIONAL LEASE MANAGEMENT, INC. (the "Vendor") providing for the acquisition by the Lessor of the railroad equipment (collectively the "Equipment" and individually an "Item" or "Item of Equipment") described in Schedule A attached hereto and made a part hereof; and

WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement, dated the date hereof (the "Conditional Sale Agreement"), with the Vendor, providing for the sale and delivery to the Lessor of the Equipment; and

WHEREAS, by instrument of Agreement and Assignment dated the date hereof, the Vendor has assigned or will assign its right, security title and interest under the Conditional Sale Agreement to First National Bank of Minneapolis, as Assignee (the "Assignee"); and

WHEREAS, the Lessee desires to lease all of the Items of Equipment or such lesser number as are delivered to and accepted under the Conditional Sale Agreement on or prior to the outside delivery date set forth in said Schedule A, at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Equipment to the Lessee upon the following terms and conditions, but subject to all the rights and remedies of the Vendor and its assigns under the Conditional Sale Agreement.

SECTION 1. DELIVERY AND ACCEPTANCE OF EQUIPMENT

Pursuant to Section 2 of the Conditional Sale Agreement, the Vendor will cause each Item of Equipment to be tendered to the Lessee at the place of delivery set forth in Schedule A hereto. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Item of Equipment is found to conform to the specifications therefor, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor, the Vendor and to the manufacturer of the Equipment a certificate of acceptance (hereinafter called "Certificate of Acceptance") substantially in the form attached hereto as Schedule B, whereupon such Item of Equipment shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all of the terms and conditions of this Lease.

SECTION 2. RENTALS AND PAYMENT DATES.

2.1. *Rentals for Equipment.* The Lessee agrees to pay the Lessor the following rent for each Item of Equipment leased hereunder;

(a) *Interim Rental.* For each Item of Equipment, an amount (the "Interim Rental") per day for the period from and including the Closing Date under the Conditional Sale Agreement to but not including January 15, 1975, due and payable on January 15, equal to 0.029861% of the Purchase Price (as defined in the Conditional Sale Agreement) of such Item; and

(b) **Fixed Rental.** For each Item of Equipment, 50 consecutive semiannual installments (the "Fixed Rental") in the amounts provided for the Items of Equipment in Schedule A hereto, payable semiannually in arrears on July 15, 1975 and on the 15th day of each January and July thereafter to and including January 15, 2000.

2.2. **Place of Rent Payment.** Subject to the rights of the Assignee set forth in Section 16 hereof, all payments provided for in this Lease to be made to the Lessor shall be made to the Lessor by wire transfer of Federal funds at its address set forth in Section 22.1 hereof, or at such other place as the Lessor or its assigns shall specify in writing.

2.3. **Net Lease.** This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or reduction thereof, including, but not limited to, abatements or reductions due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against the Vendor, the Manufacturer of the Equipment or the Assignee; nor except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity of unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment is placed and ready for delivery to the Lessor on the Lessee's lines, or is stored for the Lessor on the Lessee's lines or leaves the Lessee's lines for off-line delivery to the Lessor.

SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each Item of Equipment shall begin on the date of delivery to and acceptance by the Lessee of such Item of Equipment and, subject to the provisions of Section 11 and 21 hereof, shall terminate on January 15, 2000.

SECTION 4. TITLE TO THE EQUIPMENT.

4.1. **Retention of Title.** The Lessor is acquiring full legal title to the Equipment as Vendee under the Conditional Sale Agreement (but only upon compliance with all the terms and conditions thereof) and it is understood that Lessee shall acquire no right, title and interest to the Equipment except hereunder notwithstanding the delivery of the Equipment to and the possession and use thereof by the Lessee.

4.2. **Duty to Number and Mark Equipment.** The Lessee will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"This Unit Subject to Equipment Lease and Conditional Sale Agreement Recorded With The I.C.C."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such

Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the road number of any Item of Equipment except with the consent of the Lessor and the Assignee and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

4.3. *Prohibition Against Certain Designations.* Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

SECTION 5. DISCLAIMER OF WARRANTIES.

THE LESSOR LEASES THIS EQUIPMENT, AS-IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY THE LESSOR, AND THE LESSOR HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OR EQUIPMENT INCLUDING BUT NOT LIMITED TO THEIR VALUE, CONDITION, DESIGN OR OPERATION, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, (D) THE DESIGN OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (E) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE.

The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease, so long as the Lessee is not in default hereunder, to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the manufacturer thereof.

SECTION 6. LESSEE'S INDEMNITY.

6.1. *Scope of Indemnity.* The Lessee shall defend, indemnify and save harmless the Lessor, the Vendor and the Assignee and their successors and assigns from and against:

(a) any and all loss or damage of or to the Equipment, usual wear and tear excepted, and

(b) any claim, cause of action, damages, liability, cost or expense (including counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to the Equipment or any part thereof, including without limitation, the construction, purchase, delivery, installation, ownership, leasing or return of the Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessor or by the Lessee), (ii) by reason or as the result of any act or omission of the Lessee for itself as agent

or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent infringements, or (iv) as a result of claims for negligence or strict liability in tort.

6.2. *Continuation of Indemnities and Assumptions.* The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumption of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i), (ii) or (iv) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring before the return of the Equipment to the possession of the Lessor as provided in Sections 13 or 15, as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability.

SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including the rules of the United States Department of Transportation and the American Association of Railroads) with respect to the use, maintenance and operation of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be installed on such Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements, without cost or expense to the Lessor.

SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. The Lessee shall not modify any Item of Equipment without the written authority and approval of the Lessor which shall not be unreasonably withheld. Any parts installed (other than parts added to any Item of Equipment by the Lessee, the cost of which is not included in the Purchase Price of such Item, and which is not required for the operation or use of such Item by the Interstate Commerce Commission, the Department of Transportation or any other regulatory body) or replacements made by the Lessee upon any Item of Equipment shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor. The Lessee, at its expense, may remove from any Item of Equipment any part or replacement not considered an accession thereto, provided such removal does not damage such Item.

SECTION 9. LIENS ON THE EQUIPMENT.

Throughout the term of this Lease and during the period of any storage of the Equipment by the Lessee provided for in Section 13 or 15 hereof, the Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien, encumbrance or charge upon the Equipment, and any liens, encumbrances or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment. The Lessee's obligations under this Section 9 shall survive termination of this Lease.

SECTION 10. FILING, PAYMENT OF FEES AND TAXES.

10.1. *Filing.* Prior to the delivery and acceptance of the first Item of Equipment, the Lessee will, at its sole expense, cause this Lease, the Conditional Sale Agreement and the first assignment thereof to be duly filed, recorded or deposited in conformity with Section 20c of the Interstate Commerce Act and in such other places within or without the United States as the Lessor may reasonably request for the protection of its title or the security interest of the Assignee and will furnish the Lessor proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record (and will re-file, re-register, re-deposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of protecting the Lessor's title to, or the Assignee's security interest in, the Equipment to the satisfaction of the Lessor's or the Assignee's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, re-filing, recording, re-recording, depositing, re-depositing, registering or re-registering of any such instruments or incident to the taking of such action.

10.2. *Payment of Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes (other than any United States federal income tax or any value-added tax in lieu of or in substitution for any such income taxes [and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability, any foreign income tax] payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts or gross receipts taxes [other than gross receipts taxes in the nature of sales or use taxes], up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state or city, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith (all such expenses, taxes, assessments, license fees, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreement, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Item of Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Item of Equipment free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Item of Equipment; *provided, however,* that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Conditional Sale Agreement. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event any reports with respect to impositions are required to be made on the basis of individual Items of Equipment, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Items of Equipment or notify the Lessor

and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor and shall furnish copies of any such reports to the Vendor and the Lessor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions, pursuant to this Section 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE.

11.1. *Insurance.* The Lessee will at all times after delivery and acceptance of each Item of Equipment, at its own expense, keep or cause to be kept each such Item insured by a reputable insurance company or companies in amounts and against risks customarily insured against by other railroad companies on similar equipment. Such insurance may provide that losses shall be adjusted with the Lessee and shall provide that the proceeds thereof shall be payable to the Lessor, the Assignee, and the Lessee as their interests shall appear. All proceeds of insurance received by the Lessor and the Assignee with respect to any Items of Equipment not suffering a Casualty Occurrence (as hereinafter defined) shall be paid to the Lessee upon proof satisfactory to the Lessor and the Assignee that any damage to any Item with respect to which such proceeds were paid has been fully repaired. Any such proceeds of insurance received by the Lessor and the Assignee with respect to a Casualty Occurrence shall be credited toward the payment required by this Section 11 with respect to such Casualty Occurrence.

11.2. *Duty of Lessee to Notify Lessor.* In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the reasonable opinion of the Lessee, irreparably damaged during the term of this Lease, including any renewal term hereunder, or thereafter while the Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease, including any renewal terms hereunder (any such occurrence, except for any requisition which by its terms is for an indefinite period or is for a stated period which does not exceed the term of this Lease, being hereinafter called a Casualty Occurrence), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor and the Assignee in regard thereto and shall pay the Casualty Value (as herein defined) of such Item in accordance with the terms hereof.

11.3. *Payment of Casualty Loss.* The Lessee, on the next succeeding Interim Rental or Fixed Rental payment date following a Casualty Occurrence with respect to any Item of Equipment, shall pay to the Lessor the rental installment due on such payment date for such Item of Equipment plus a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment.

11.4. *Rent Termination.* Upon (and not until) payment of the Casualty Value in respect of any Item of Equipment and the rental installment due on such payment date, the obligation to pay rent for such Item of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

11.5. *Disposition of Equipment.* The Lessee shall, as agent for the Lessor, dispose of such Item of Equipment having suffered a Casualty Occurrence as soon as it is able to do so for the fair market value thereof. Any such disposition shall be on an "as is", "where is" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of, the Lessee may retain all amounts of such price plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any, to the Lessor. In disposing of such Item of

Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after such disposition from or connected with such Item of Equipment.

11.6. *Casualty Value.* The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the Purchase Price of such Item of Equipment as is set forth in the Schedule of Casualty Value attached hereto as Schedule C opposite such date of payment.

11.7. *Risk of Loss.* The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value and the Fixed Rental installments due on and prior to the date of payment of such Casualty Value in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof have been transferred to the purchaser of such Item or the salvage thereof.

11.8. *Eminent Domain.* In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease, the Lessee's obligation to pay rent shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

SECTION 12. ANNUAL REPORTS.

12.1. *Duty of Lessee to Furnish.* On or before May 1 in each year, commencing with the year 1975, the Lessee will furnish to the Lessor and to the Assignee an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as Lessor may reasonably request, (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced, and (c) describing the insurance coverage, if any, maintained by the Lessee pursuant to the first paragraph of Section 11.1 hereof.

12.2. *Lessor's Inspection Rights.* The Lessor and the Assignee each shall have the right, at its sole cost and expense by its authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor or, as the case may be, the Assignee the existence and proper maintenance thereof during the continuance of this Lease.

12.3. *Financial Reports.* The Lessee will furnish to the Lessor at the same time reports are required to be furnished to the Assignee, such reports as are required to be furnished to the Assignee pursuant to Section 6 of the Finance Agreement (the "Finance Agreement") dated as of September 1, 1974, among the Lessee, the Assignee and certain institutional investors identified therein (the "Investors").

SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor upon such storage tracks of the Lessee as the Lessee may designate, or in the absence of such designation, as the Lessor may select, and permit the Lessor to store such Item of Equipment on such tracks for a period not exceeding 90 days and transport the same at any time within such 90 day period to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee. All movement and storage of each such Item is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. During any such storage period the Lessee shall maintain the Items of Equipment in such manner as the Lessee normally maintains similar equipment owned or leased by it in similar storage circumstances. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment.

SECTION 14. DEFAULT.

14.1. *Events of Default.* Any of the following events shall constitute an Event of Default hereunder:

(a) Default shall be made in the payment of any part of the rental or other sums provided in Section 2 hereof or in Section 11 hereof and such default shall continue for five days; or

(b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof, and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such Equipment within 30 days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession; or

(c) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Conditional Sale Agreement and such default shall continue for 30 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied; or

(d) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and (unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Lessee under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees within 30 days after such appointment or 60 days after such petition shall have been filed, whichever shall be earlier; or

(e) Any other proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors readjustments or indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and (unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment or 60 days after such proceedings shall have been commenced, whichever shall be earlier.

When any Event of Default described above has, to the knowledge of the Lessee, occurred, the Lessee agrees to give notice thereof within three business days thereafter to the Lessor and to the Assignee.

14.2. *Remedies.* If any Event of Default has occurred and is continuing, the Lessor, at its option may:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any of such Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Equipment for any purpose whatever, but the Lessor, shall, nevertheless, have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by a fraction of which the numerator is such accrued number of days in such full rental period and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Item of Equipment, which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then fair rental value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of the Item during such period, such present worth to be computed in each case on a basis of a rate of 7½% per annum, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses including reasonable attorney's fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease, other than for the payment of rental; and

(c) In the event of any such termination and whether or not the Lessor shall have exercised or shall thereafter exercise any of its other rights under paragraph (b) above, the Lessor shall have the right to recover from the Lessee an amount which, after deduction of

all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the 7% investment credit attributable to 100% of the total Purchase Price of the Equipment (the "Investment Credit") allowed by Section 38 and related sections of the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"), which was lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants by the Lessee in Section 20 or any other provision of the Lease, the termination of this Lease, the Lessor's loss of the right to use any Item of Equipment, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in any Item of Equipment after the occurrence of an Event of Default plus such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net after tax return under this Lease to be equal to the net after tax return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of (i) the deduction (the "Interest Deduction") in each taxable year of the Lessor for all interest accrued during such year on the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) computed in accordance with Section 163 of the Code and (ii) the maximum depreciation deduction authorized with respect to an Item of Equipment under Section 167 of the Code utilizing the "class lives" and "asset depreciation ranges" prescribed in accordance with Section 167(m) of said Code and depreciating such Item to a salvage value equal to 5% of the Purchase Price thereof (the "Depreciation Deduction") which was lost, not claimed, not available for claim, disallowed or recaptured in respect of an Item of Equipment as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in Section 20 or any provision of this Lease, the termination of this Lease, the Lessor's loss of the right to use such Item of Equipment, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Item of Equipment after the occurrence of an Event of Default.

Anything in this Section 14 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of all or any portion of the Investment Credit, the Depreciation Deduction or the Interest Deduction shall be for all purposes of this Lease deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of the Investment Credit the Depreciation Deduction or the Interest Deduction, or such portion thereof, agree to pay to the Lessor a lump sum with respect to the Investment Credit and a revised rental rate with respect to said loss of the Depreciation Deduction or the Interest Deduction so that, in the reasonable opinion of the Lessor, the Lessor shall have the same rate of return as though the Lessor had the benefit of the Investment Credit, the Depreciation Deduction and the Interest Deduction.

14.3. *Cumulative Remedies.* The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any off-set against the rent payments due hereunder, and agrees to make the rent payments regardless of any off-set or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Equipment.

14.4. *Lessor's Failure to Exercise Rights.* The failure of the Lessor to exercise the rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

14.5. *Termination by Assignee of Conditional Sale Agreement.* Anything in this Lease to the contrary notwithstanding, if the Assignee of the Conditional Sale Agreement shall, upon the occurrence of an Event of Default as defined therein, state in a written notice to the Lessor and Lessee that this Lease terminates, this Lease shall, immediately upon receipt by Lessee of such notice, terminate as to all the Items of Equipment, and the rights of the Lessee hereunder shall at all times and in all respects be subject and subordinate to the rights and remedies of the Assignee under the Conditional Sale Agreement; provided that so long as the Lessee shall not be in default under this Lease, or under the Conditional Sale Agreement, in its capacity as Guarantor thereunder or otherwise, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease and the Conditional Sale Agreement.

SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1. *Lessee's Duty to Return.* If the Lessor or the Assignee shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith place such Equipment in such reasonable storage place on the Lessee's lines of railroad as the Lessor may designate or, in the absence of such designation, as the Lessee may select;

(b) Permit the Lessor to store such Equipment in such reasonable storage place on the Lessee's lines of railroad for a period not exceeding 180 days' at the risk of the Lessee; and

(c) Transport the Equipment, at any time within such 180 days' period, to any place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as the Lessor may reasonably direct upon not less than 30 days' written notice to the Lessee.

15.2. *Specific Performance.* The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

15.3. *Lessor Appointed Lessee's Agent.* Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such Item.

SECTION 16. ASSIGNMENTS BY LESSOR.

This Lease and all rent and other sums due and to become due hereunder have been assigned to the Assignee pursuant to Section 25 of the Conditional Sale Agreement, and all rent and other sums due and to become due hereunder shall be paid by wire transfer of Federal funds to the Assignee at its principal office at 120 South Sixth Street, Minneapolis, Minnesota 55480 or at such place as the Assignee shall from time to time specify to the Lessee in writing; provided that upon receipt by the Lessee of written notice from the Assignee that the Conditional Sale

Indebtedness and all interest thereon under the Conditional Sale Agreement has been paid in full, all rentals and other sums due thereafter shall thereafter be paid to the Lessor at its address provided in Section 22.1 hereof. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of the Assignee in and to the sums payable by the Lessee under any provisions of this Lease shall not be subject to any abatement whatsoever, and shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever whether by reason of or defect in Lessor's title, or any interruption from whatsoever cause (other than from a wrongful act of the Assignee) in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of the Assignee, the Lessee shall be unconditionally and absolutely obligated to pay the Assignee all of the rents and other sums which are the subject matter of the assignment, and (ii) the Assignee shall have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of the Assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor.

SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

17.1 *Lessee's Rights to the Equipment.* So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

17.2 *Use and Possession.* The Lessee shall be entitled to the possession of the Equipment and to the use thereof upon the lines of railroad owned or operated by it (either alone or jointly) or by any corporation a majority of whose voting stock (i.e., having ordinary voting power for the election of a majority of its Board of Directors) is owned directly or indirectly by the Lessee, or upon lines of railroad over which the Lessee or such corporation has trackage or other operating rights or over which Equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Equipment upon connecting and other carriers in the usual interchange of traffic and equipment, but only upon and subject to all the terms and conditions of this Lease. The Lessee may receive and retain compensation for such use from other railroads so using any of the Items of Equipment. Notwithstanding the foregoing or anything hereinafter provided, the Lessee will not assign any Item of Equipment to service including the regular operation and maintenance thereof outside the United States of America.

So long as the Lessee shall not be in default under this Lease, the Lessee, upon prior written consent of the Lessor, which consent shall not be unreasonably withheld, shall be entitled to sublease the Equipment to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia; *provided, however*, that the Lessee shall be entitled to sublease the Equipment for periods of no longer than 60 days without the written consent of the Lessor; *provided, further however*, that the rights of any such sublessee are made expressly subordinate to the rights and remedies of the Vendor under the Conditional Sale Agreement and the Lessor under the Lease and such sublease shall not alter in any way the Lessee's obligations to the Lessor which obligations shall be and remain those of a principal and not a guarantor.

17.3. *Merger, Consolidation or Acquisition of Lessee.* Nothing in this Section 17 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation (which shall have duly assumed the obligations hereunder of Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines of the railroad of the Lessee, *provided that* such assignees, successors or transferees will not, upon the effectiveness of such merger or consolidation or acquisition of properties, be in default under any provision of this Lease and that such merger or consolidation or acquisition of properties shall not alter in any way the Lessee's obligation to the Lessor hereunder which shall be and remain those of a principal and not a guarantor.

SECTION 18. OPINION OF LESSEE'S COUNSEL.

On or prior to the Closing Date under the Conditional Sale Agreement, the Lessee will deliver to the Lessor such number of counterparts of the written opinion of counsel for the Lessee as the Lessor may reasonably request, addressed to the Lessor, the Assignee and the Investors, in scope and substance satisfactory to the Lessor, to the effect that:

(a) The Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the State of Delaware;

(b) The Lessee has the corporate or other power and authority to own its property and carry on its business as now being conducted and is duly qualified to do business as a foreign corporation in all states in which such qualification is necessary to carry out the terms of the Lease;

(c) This Lease, the Conditional Sale Agreement, the Acquisition Agreement, and the Finance Agreement have each been duly authorized, executed and delivered by the Lessee and constitute the valid, legal and binding agreements of the Lessee enforceable in accordance with their respective terms;

(d) This Lease and the Conditional Sale Agreement have each been filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and no other filing, recording or depositing is necessary to protect the Lessor's title to the Equipment in the United States of America;

(e) No approval, consent of, or filing with, any public regulatory body is required with respect to the entering into or performance by the Lessee of the Acquisition Agreement, the Conditional Sale Agreement, the Finance Agreement or this Lease;

(f) The execution and delivery by the Lessee of the Acquisition Agreement, the Conditional Sale Agreement, the Finance Agreement and this Lease do not violate any provision of any law, any order of any court or governmental agency, the Charter or By-laws of the Lessee, or any indenture, agreement, or other instrument to which the Lessee is a party or by which it, or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Lessee, except upon the leasehold estate of the Lessee hereunder; and

(g) As to any other matter which the Lessor or the Assignee shall reasonably request.

SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNTS PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay an amount equal to 11.75% per annum (or

the lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

SECTION 20. FEDERAL INCOME TAXES.

The Lessor, as the owner of each Item of Equipment, shall be entitled to such deductions, credits or other benefits as are provided by the Code (as defined in Section 14 of this Lease), to an owner of property, including (without limitation) an allowance for the Investment Credit, the Interest Deduction and the Depreciation Deduction (each as defined in Section 14 of this Lease) with respect to the Items of Equipment.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof; *provided, however*, that the Lessee may terminate this Lease with respect to an Item or Items of Equipment as hereinafter in this Section provided, pursuant to Section 11 hereof or pursuant to Section 5 of the Acquisition Agreement. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the full benefit of the Investment Credit, the Interest Deduction and the Depreciation Deduction with respect to the Items of Equipment.

The Lessee represents and warrants that (i) none of the Items of Equipment constitutes property, the construction, reconstruction or erection of which was begun before April 1, 1971; (ii) at the time the Lessor becomes the owner of the Items of Equipment, the Purchase Price of the Items of Equipment will qualify as "new section 38 property" within the meaning of Section 48(b) of the Code; (iii) at the time the Lessor becomes the owner of the Items of Equipment, the Items of Equipment will not have been used by any person so as to preclude "the original use of such property" within the meaning of Section 48(b) and 167(c)(2) of the Code from commencing with the Lessor and the Lessor shall be able to depreciate the Items of Equipment to an amount equal to 5% of the Purchase Price thereof; (iv) at the time the Lessor becomes the owner of the Items of Equipment, no investment credit, depreciation or other tax benefits will have been claimed by any person with respect to the Items of Equipment; and (v) at all times during the term of this Lease, the Lessee will do nothing which will cause the Items of Equipment to cease to be "Section 38 property" within the meaning of Section 48(a) of the Code.

If the Lessor is unable to obtain by June 1, 1975, or if prior to June 1, 1975 the Lessor is advised by the Internal Revenue Service that it will not receive, a ruling from the Internal Revenue Service to the effect that (i) this Lease is a lease for Federal tax purposes, (ii) the Lessor is entitled to the Interest Deduction available under Section 163 of the Code, (iii) the Lessor is entitled to the Depreciation Deduction (other than as to the salvage value) with respect to the Items of Equipment, (iv) the Lessor is entitled to the Investment Credit with respect to the Items of Equipment, and (v) the Lessee will be entitled to a deduction of the rental payments due and payable pursuant to this Lease under Section 162 of the Code, then on June 1, 1975, or such earlier date following receipt of such advice as is designated by the Lessor to the Lessee but not less than ten business days prior written notice, the Lessee will purchase from the Lessor all its right, title and interest in and to the Items of Equipment then subject to this Lease and concurrently therewith the Lessee shall further assume each and all of the obligations of the Lessor with respect to all payments due and performance under the Conditional Sale Agreement. Upon the written request of the Assignee the Lessee shall execute such further agreements as shall be reasonably requested to confirm and evidence such assumption. The purchase price

payable by the Lessee to the Lessor for such Items of Equipment shall be an amount equal to the difference between (i) the amount advanced by the Lessor to purchase such Items of Equipment pursuant to Section 3.3(a) of the Conditional Sale Agreement plus interest thereon from date of advancement to the date of payment of said purchase price by the Lessee at the rate of 10.75% per annum, and (ii) the portion of the payment of Interim Rental paid by the Lessee on January 15, 1975, which was in excess of the installment of accrued interest due on such date under the Conditional Sale Agreement, plus interest on the amount of such portion from January 15, 1975, to the date of payment of said purchase price by the Lessee at the rate of 10.75% per annum.

The Lessor agrees that it will apply for and diligently seek a favorable ruling from the Internal Revenue Service. The Lessee shall have the right to review the request for ruling and participate in seeking such ruling if the Lessee desires.

SECTION 21. OPTIONS TO PURCHASE AND RENEW.

21.1. *Purchase Option.* Provided that the Lessee is not in default hereunder, Lessee shall have the following option to purchase:

(a) The Lessee shall have the right to purchase all but not less than all of the Items of Equipment then leased hereunder on the 50th Fixed Rental payment date at a price equal to the greater of 10% of the Purchase Price of such Items or the Fair Market Value of such Items (as hereinafter defined); *provided, however*, that in the event the Lessee does not elect to exercise its right to purchase such Items on the 50th Fixed Rental payment date and the Fair Market Value thereof is not greater than 10% of the Purchase Price of such Items, then the Lessor may, at its option, require the Lessee to purchase all, but not less than all, of the Items of Equipment then leased hereunder for a purchase price equal to 10% of the Purchase Price of such Items. The Lessee shall give the Lessor written notice of any such election not less than six months prior to the expiration of the term of this Lease. If no such notice is given and the Lessor wishes to exercise its right to require purchase of the Items of Equipment then subject to this Lease by the Lessee, the Lessor shall give the Lessee 150 days prior written notice of such election. Payment of the Purchase Price shall be made at the place of payment specified in Section 2 hereof in immediately available funds against delivery of a bill of sale transferring and assigning to the Lessee all right, title and interest of the Lessor in and to such Items of Equipment and containing a warranty against liens or claims of persons claiming by, through or under the Lessor except liens and claims which the Lessee assumed or is obligated to discharge under the terms of the Lease. The Lessor shall not be required to make any representation or warranty as to the condition of such Items of Equipment or any other matters.

(b) The Fair Market Value of an Item of Equipment shall be determined on the basis of, and shall be equal in amount to, the value (excepting parts which are not deemed to be accessions under Section 8 hereof) which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) under no compulsion to buy and an informed and willing seller under no compulsion to sell. If on or before 90 days prior to the date of purchase the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of an Item of Equipment, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 60 days

following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

(c) Notwithstanding any undertaking of the Lessee to purchase as provided in this Section 20.1, the provisions of Section 11 hereof shall continue in full force and effect until the date of purchase and the passage of ownership of the Items of Equipment purchased by the Lessee upon such date unless the purchase price has been agreed upon by the parties pursuant to this Section 20.1, in which event such purchase price shall govern the amount payable under Section 11 hereof.

21.2. *Delivery of Equipment.* Unless the Lessee has elected or is required to purchase the Items of Equipment then leased hereunder as provided in this Section 21, all of such Items of Equipment shall be returned to the Lessor at the end of the term hereof in accordance with Section 13 hereof.

SECTION 22. MISCELLANEOUS.

22.1. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, addressed as follows:

If to the Lessor: Borg-Warner Equities Corporation
One IBM Plaza
Chicago, Illinois 60611
Attention: National Commercial & Leasing Manager
with a copy to the above address,
Attention: General Counsel.

If to the Lessee: Chicago and North Western Transportation Company
400 West Madison Street
Chicago, Illinois 60606
Attention: Vice President—Finance

If to the Assignee: First National Bank of Minneapolis
120 South Sixth Street
Minneapolis, Minnesota 55480
Attention: Corporate Trust Department


or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

22.2. *Execution in Counterparts.* This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

22.3. *Law Governing.* This Lease shall be construed in accordance with the laws of Illinois; *Provided, however,* that the parties shall be entitled to all rights conferred by any applicable federal statute, rule or regulation.


22.4. *Limitations of Liability.* It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that no liability or responsibility in its individual corporate capacity is assumed by nor shall at any time be asserted or enforceable against the Lessor, or any incorporator or any past, present or future subscriber to the capital stock of, the Lessor, on account of this Lease or on account of any representation, covenant, undertaking or agreement of the Lessor in this Lease contained, either expressed or implied, all such individual corporate liability, if any, being expressly waived and released by the Lessee herein and by all persons claiming by, through or under the Lessee; excepting, however, that the Lessee or any person claiming by, through or under it, making claim hereunder, may look to the Equipment for satisfaction of the same.

BORG-WARNER EQUITIES CORPORATION

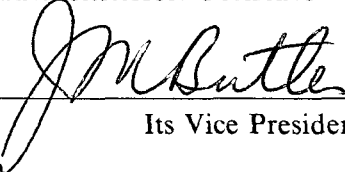
By 
Its Vice President—Finance

(Corporate Seal)

Attest:

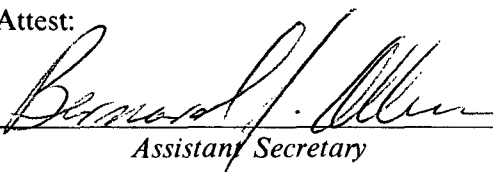

Assistant Secretary

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

By 
Its Vice President

(Corporate Seal)

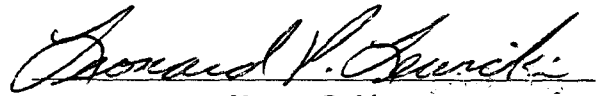
Attest:


Assistant Secretary

STATE OF ILLINOIS
COUNTY OF COOK

} SS.:

On this 26th day of September, 1974, before me personally appeared O. B. Davies, to me personally known, who being by me duly sworn, says that he is the Vice President-Finance of BORG-WARNER EQUITIES CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public

(Seal)

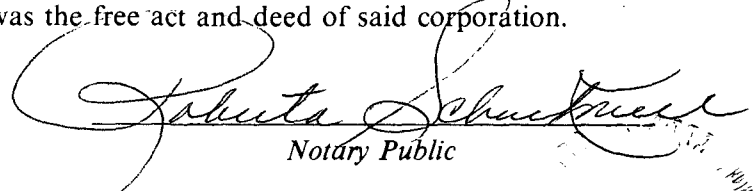
My Commission Expires:

~~My Commission Expires November 16, 1977~~

STATE OF ILLINOIS
COUNTY OF COOK

} SS.:

On this 26th day of September, 1974, before me personally appeared J. M. Butler, to me personally known, who being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Notary Public

(Seal)

My Commission Expires:

~~MY COMMISSION EXPIRES JUNE 27, 1978~~

SCHEDULE A
to Equipment Lease

MANUFACTURER Pullman, Incorporated (Pullman-Standard Division)

DESCRIPTION OF EQUIPMENT 200 one hundred ton 4,750 cubic foot capacity Covered Hopper Cars bearing Chicago and North Western Transportation Company's identifying numbers 174500 to 174699, both inclusive.

SPECIFICATIONS As provided in letter agreement dated November 13, 1973 between the Manufacturer and the Vendor

BASE PRICE \$24,000 per Item (\$4,800,000 for 200 Items) or such other price not exceeding \$25,142.85 per Item (\$5,028,570 for 200 Items) as shall be agreed to between the Lessee and the Vendor.

DELIVER TO Chicago and North Western Transportation Company

PLACE OF DELIVERY Melrose Park, Illinois (Proviso Yards)

ESTIMATED DELIVERY DATES September, October, 1974

OUTSIDE DELIVERY DATE December 31, 1974

FIXED RENTAL PAYMENTS 50 semiannual Fixed Rental installments in arrears as follows: (1) The first 20 such installments shall each be equal to 4.75009% of the Purchase Price of each Item of Equipment; (2) the next 10 such installments shall each be equal to 6.70000% of the Purchase Price of each Item of Equipment and (3) the final 20 such installments shall each be equal to 1.25000% of the Purchase Price of each Item of Equipment.

**SCHEDULE B
to Equipment Lease**

**CERTIFICATE OF ACCEPTANCE
UNDER EQUIPMENT LEASE**

To: Pullman, Incorporated (Pullman-Standard Division) ("Manufacturer"),
Borg-Warner Equities Corporation ("Lessor"),
Professional Lease Management, Inc. ("Vendor")

I, a duly appointed inspector and authorized representative of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY ("Lessee"), the above named Lessor and the Vendor do hereby certify that I have received, approved and accepted delivery, on behalf of the Lessee under the Equipment Lease dated as of September 1, 1974 between the Lessor and the Lessee, on behalf of the Lessor under the Conditional Sale Agreement dated as of September 1, 1974 among the Vendor, the Lessor and the Lessee and on behalf of the Vendor under the letter agreement dated November 13, 1973 between the Manufacturer and the Vendor, of the following Items of Equipment ("Equipment") which Items have been inspected prior to or concurrently with such acceptance:

TYPE OF EQUIPMENT.....
MANUFACTURER.....
PLACE ACCEPTED.....
DATE ACCEPTED.....
NUMBER OF ITEMS.....
NUMBERED.....

I do further certify that the foregoing Equipment is in good order and condition, and conforms to the Specifications applicable thereto, and to all Department of Transportation requirements and specifications for new equipment and to all standards recommended by the Association of American Railroads, and at the time of delivery to the Lessee there was plainly, distinctly, permanently and conspicuously marked in contrasting colors upon each side of each Item of Equipment the following legend in letters not less than one inch in height:

"This Unit Subject to Equipment Lease and Conditional Sale Agreement Recorded with the I.C.C."

The execution of this Certificate will in no way relieve or decrease the responsibility of the Manufacturer for warranties it has made with respect to the Equipment.

.....
Inspector and Authorized Representative of
Lessee, Lessor and Vendor

(Chicago and North Western No. 74-1)

SCHEDULE A
to Equipment Lease

MANUFACTURER Pullman, Incorporated (Pullman-Standard Division)

DESCRIPTION OF EQUIPMENT 200 one hundred ton 4,750 cubic foot capacity Covered Hopper Cars bearing Chicago and North Western Transportation Company's identifying numbers 174500 to 174699, both inclusive.

SPECIFICATIONS As provided in letter agreement dated November 13, 1973 between the Manufacturer and the Vendor

BASE PRICE \$24,000 per Item (\$4,800,000 for 200 Items) or such other price not exceeding \$25,142.85 per Item (\$5,028,570 for 200 Items) as shall be agreed to between the Lessee and the Vendor.

DELIVER TO Chicago and North Western Transportation Company

PLACE OF DELIVERY Melrose Park, Illinois (Proviso Yards)

ESTIMATED DELIVERY DATES September, October, 1974

OUTSIDE DELIVERY DATE December 31, 1974

FIXED RENTAL PAYMENTS 50 semiannual Fixed Rental installments in arrears as follows: (1) The first 20 such installments shall each be equal to 4.75009% of the Purchase Price of each Item of Equipment; (2) the next 10 such installments shall each be equal to 6.70000% of the Purchase Price of each Item of Equipment and (3) the final 20 such installments shall each be equal to 1.25000% of the Purchase Price of each Item of Equipment.

**SCHEDULE C
to Equipment Lease**

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

SCHEDULE OF CASUALTY VALUE

The Casualty Value of an Item of Equipment payable on the Interim Rental or any Fixed Rental payment date shall mean an amount equal to the per cent of the Purchase Price (as defined in the Conditional Sale Agreement) of such item set forth opposite such payment date in the following schedule:

<u>Interim Rental or Number of Periodic Rental Payment Date on which Casualty Value is Paid (Payment in Addition to Rent Payment)</u>	<u>Percentage of Purchase Price (as defined in the Conditional Sale Agreement) Payable as Casualty Value</u>
Interim Rental	112.9524%
1	106.4711%
2	106.2781%
3	107.5028%
4	107.3309%
5	107.8816%
6	102.6353%
7	102.5720%
8	101.5898%
9	100.9347%
10	94.9054%
11	93.6839%
12	92.0000%
13	90.3026%
14	83.7126%
15	81.8010%
16	79.6798%
17	77.5515%
18	75.2024%
19	72.8335%
20	70.2312%
21	65.6607%
22	60.9300%
23	56.0657%
24	51.1053%
25	46.0248%
26	40.8774%
27	35.6176%
28	30.3039%
29	24.8887%
30	19.4364%
31	19.2981%
32	23.4425%

<u>Interim Rental or Number of Periodic Rental Payment Date on which Casualty Value is Paid (Payment in Addition to Rent Payment)</u>	<u>Percentage of Purchase Price (as defined in the Conditional Sale Agreement) Payable as Casualty Value</u>
33	19.4001%
34	24.6477%
35	19.6718%
36	19.7692%
37	19.8638%
38	19.9665%
39	20.0667%
40	20.1754%
41	20.2820%
42	20.3973%
43	20.5109%
44	20.6337%
45	20.7551%
46	20.8862%
47	21.0165%
48	21.1569%
49	21.2994%
50 and thereafter during any storage period.....	21.4594%

Chicago and North Western
Railway Company



December 29, 1994

File: A-9298
EOC: L-269

165 N. Canal St.
Chicago, Illinois 60606

Office of the Secretary
312.559.6156

Mr. Sidney Strickland, Jr.
Secretary
Interstate Commerce Commission
Washington, DC 20423


RE: Equipment Lease dated as of September 1, 1974 between Borg-Warner Equities Corporation as Lessor and Chicago and North Western Transportation Company as Lessee

ICC Recordation No.: 7657

Dear Mr. Strickland:

In connection with the above agreements, please be advised that the name of Chicago and North Western Transportation Company was changed to **Chicago and North Western Railway Company** effective May 6, 1994, pursuant to the Certificate of Amendment of Restated Certificate of Incorporation of Chicago and North Western Transportation Company filed with the State of Delaware on May 5, 1994.

Sincerely,


K. A. Dombrowski
Assistant Secretary

STATE OF ILLINOIS)
COUNTY OF COOK) SS.

On this 29th day of December, 1994, before me personally appeared K. A. Dombrowski, to me personally known, who, by me being duly sworn, says that she is Assistant Secretary of Chicago and North Western Railway Company and that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My commission expires: April 12, 1995

